

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of)
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Review of the Commission's)
Regulations and Policies)
Affecting Investment)
in the Broadcast Industry)

MM Docket 92-51

QUET 3 1992

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

To: The Commission

ORIGINAL
FILE

REPLY COMMENTS
OF
ML MEDIA PARTNERS, L.P.

ML Media Partners, L.P. ("ML Media"), by its attorneys, submits herewith the following reply comments in the above-captioned matter. As with its initial comments, ML Media's reply will focus on the proposed change in the attribution criteria relevant to interests of limited partners.

I. Introduction

As expected, the bulk of the comments submitted in this proceeding dealt with the ability of lenders to obtain a security interest in a broadcast license. Several parties, however, did address the issue of modifying the insulation criteria applicable to limited partnerships.¹ Those who did,

¹ See Comments of The Prudential Insurance Company of America at 11-14 ("Prudential Comments"); Comments of The National Association of Investment Companies at 2 ("NAIC Comments"); and Comments of A.H. Belo Corporation, et. al., at 14-27 ("Joint Parties Comments").

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moreover, uniformly supported a revision of the Commission's attribution criteria for limited partners.

The comments supporting revision ranged from the perfunctory statement contained in the NAIC Comments, to a detailed argument supporting the Commission's position contained in the Joint Parties Comments. The Prudential Comments, however, not only support the need to change the attribution criteria applicable to limited partners, but urge the Commission to allow limited partners to hold up to a 10 percent equity interest in a limited partnership (or 20% in the case of passive investors) without being considered to hold an attributable interest in the licensee. As noted in our opening Comments,² and for the reasons set forth more fully below, ML Media fully supports Prudential's position and urges the Commission to adopt the equity test as an attribution criterion for limited partnerships.³

² See Comments of ML Media at 9, n.6. In its Comments, ML Media supported a more limited revision to the attribution criteria. ML Media believes that the Commission should, at a minimum, adopt those limited revisions.

³ Again, ML Media believes that any equity benchmark should be in addition to the current insulation standards set forth by the Commission. Thus, an individual holding more than a 10% equity interest in a limited partnership would still be able to obtain non-attribution status if able to comply with the current insulation criteria.

II. The Commission Should Adopt a Voting/Equity Benchmark Similar to That Currently Enjoyed by Corporate Stockholders To Determine the Attribution Status of Limited Partners

As the Commission is well aware, the limited partnership, although originally conceived as a structure for relatively small groups, has become over time a major financing tool used for developing acquisition funds and other avenues of investment. See, e.g., McKinney's Consolidated Laws of New York, Partnerships, Article 8-A, Practice Commentaries. Its use in developing financing for broadcast and cable properties has been hampered, however, by overly restrictive insulation criteria which make it difficult -- and in some cases impossible -- for limited partnerships to obtain non-attribution status for their limited partners. The end result is that limited partnerships encounter problems in certifying compliance with a variety of Commission rules and regulations⁴ and individual investors with small interests in several limited partnerships may inadvertently run afoul of the Commission's multiple ownership rules.

⁴ If all of ML Media's more than 17,000 limited partners were considered to have attributable interests in the partnership, it would, for example, be virtually impossible for ML Media to certify that it was in compliance with the Commission's new Anti-Drug Abuse Act certification requirement.

Corporations, by contrast, have no such difficulty. The Commission has utilized a simple and effective voting benchmark to determine the attribution status of stockholders. See 47 CFR § 73.3555, Note 2(a). The Commission, moreover, has not placed any restrictions on the involvement of such shareholders in the day-to-day operations of the corporation because it has recognized that they simply lack the ability to materially influence or control the corporation's media investments. See, e.g., Report and Order in MM Docket No. 83-46, 97 FCC 2d 997, 1007 (1984). Thus, for example, a 4% stockholder could act as general manager of a radio station and be considered to have a non-attributable interest in the licensee of the station.

The Commission, however, has expressed concern with adopting the same approach for limited partnerships. It appears to believe that the flexibility of the partnership form may allow limited partners with an ostensibly small equity interest to exert inordinate influence or control over the partnership. See Multiple Ownership Rules (Ownership Attribution Reconsideration), 61 RR 2d 739, 746 (1986).

ML Media believes that the Commission's concerns in this regard are unfounded. Although limited partners may indeed be able to participate in the control of the limited partnership, so too can voting stockholders in a corporation. As the Commission has properly recognized in the corporate

context, however, to the extent that the voting control is less than five or ten percent, these individuals simply lack the ability to exert material influence or control over the licensee. The Commission should recognize that the distinctions it has drawn between the limited partnership and corporate forms do not reflect the reality of today's business environment. Accordingly, ML Media fully supports the application of an equity and/or voting standard to determine the attribution status of limited partners.⁵

The Joint Parties, in their comments, propose a different standard. They suggest that limited partners in partnerships subject to reporting requirements be exempt from attribution. Joint Parties Comments at 14-27. ML Media believes that, although this standard may produce a convenient "bright-line" test, the mere fact that a particular limited partnership is subject to reporting requirements does not make it any more or less likely that its limited partners will be able to exert control over the partnership. Just as business development companies are subject to certain regulations which have no real bearing on issues pertinent to the Commission's multiple ownership

⁵ It is, of course, possible that in certain limited instances a limited partner may exert control over the limited partnership in excess of its equity or voting interest. As in the corporate context, however, the Commission can deal with questions of de facto control on a case-by-case basis.

rules, the reporting requirements are not intended to insulate limited partners from control. Rather, they are designed to provide information to limited partners and potential investors. Although it is undoubtedly true that limited partners of limited partnerships subject to reporting requirements are unlikely to become involved in partnership affairs, limited partners of other limited partnerships not subject to reporting requirements also will rarely be in a position to exert any meaningful influence or control. Thus, the standard set forth by the Joint Parties, although easily applied, does not provide a rational dividing point between attributable and non-attributable status. Rather, as set forth above, an equity and/or voting standard is both easily applied and sufficient to ensure that limited partners do not "materially influence or control" the partnerships' media activities.

III. Conclusion

Accordingly, ML Media supports modifying the attribution standards applicable to limited partners. As indicated in our initial comments, ML Media believes that, at a minimum, the criteria should be changed so as to allow limited partners to vote on the election and removal of general partners without losing non-attribution status in situations in which state or federal securities laws require that voting

rights be given. ML Media, however, further urges the Commission to adopt a voting/equity interest standard for limited partnerships similar to that used to determine attributable interests in corporate licensees.

Respectfully submitted,

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July 13, 1992